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FILE

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of:	)	GEN Docket No. ~~90-314~~
	)	ET Docket No. 92-100
Amendment of the Commission's Rules to Establish New Personal Communications Services	)	RM-7140, RM-7175, RM-7617,
	)	RM-7618, RM-7760, RM-7782,
	)	RM-7860, RM-7977, RM-7978,
	)	RM-7979 & RM-7980

COMMENTS OF ASSOCIATED PCN COMPANY

Respectfully submitted,

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SUMMARY

Associated PCN Company ("APCN") obtained an early experimental license to enable it to test its unique spectrum sharing concepts in the Los Angeles area, concepts which are proving valid in the field. APCN thus comes to this rulemaking from a position of longstanding interest and participation in PCS. The major points made by APCN in its comments are summarized below.

The maximum number of PCS providers the Commission should license at the outset is two. Not only are there limiting technical reasons involving adequate spectrum per licensee, but also there are pro-competitive reasons for having fewer PCS providers in a market.

Spectrum allocation per licensee should be set at 40 MHz. Because of the need to share spectrum with incumbent users for some time to come, each PCS licensee will need sufficient spectrum to compete with other land mobile services and to offer the full range of PCS services. Moreover, the Commission must ensure that no licensee receives an allocation which is occupied by significantly more incumbent users than any other block.

Technical flexibility is mandatory. Subject only to interference considerations, PCS providers must be able to employ technological innovations. There is no fixed and proper way to construct and operate PCS. Thus, the Commission must be liberal with such issues as channel separation, channelization and height and power limitations.

Likewise, the regulatory status for PCS should remain flexible. Common carrier or private carrier status should be available, depending on the services which a PCS provider wishes to offer.

Cellular operators should not be eligible for PCS licenses in their service areas except for non-controlling minority ownership interests. Cellular licensees should be able to obtain more spectrum to remain competitive if PCS providers are awarded 40 MHz of spectrum. APCN agrees that local telephone companies which are not otherwise cellular licensees should be eligible for PCS licenses. But there should be not set-asides or other advantages provided, and some safeguards appear warranted.

Steps to toughen the application process and to require license recipients to perform should be taken in order to cut down on speculators and to move PCS forward more rapidly.

Full co-carrier treatment, including "calling party pays", must be ensured in the interconnection area.

Marketplace negotiations regarding incumbent user relocation are desirable and should not be circumscribed.

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COMMENTS OF ASSOCIATED PCN COMPANY

Associated PCN Company ("APCN"), by its attorneys, herein submits its comments in response to the Commission's Notice of Proposed Rule Making on Personal Communications Services ("PCS").

APCN received an experimental license from the Commission on January 7, 1991, to test its unique concept for implementing PCS in Los Angeles (KF2XEK, File No. 1584-EX-PL-90).[1] This concept includes Code-Division Multiple Access, highly directionalized antenna placement, and highly selective channel assignments. APCN uses a 5 MHz bandwidth channelization scheme designed to be non-interfering with existing users in the 1850-1990 MHz band. APCN has chronicled the progression of its Los Angeles experiments in seven quarterly reports.

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[1] APCN subsequently received experimental licenses for New York, NY (KK2XEB), Chicago, IL (KK2XEC) and Washington, D.C. (KK2XEK).

Number of Providers. The Commission's public policy goal is to provide the widest range of PCS services at the lowest possible price to the public. This must be balanced, however, by the limitations on the amount of spectrum which can be allocated to PCS. Thus, the Commission's compromise proposal is to license three providers in each market area. Comment is also sought on whether a larger number, such as four or five, would be better.[2]

APCN believes that the Commission should not even license three PCS providers in a market. Not only is there a technical necessity to allocate a sufficient amount of spectrum to each licensee (see below), but there are also pro-competitive reasons for not having too many PCS providers. Even without PCS, competition in existing land mobile technologies is increasing. ESMR is on the immediate horizon, paging is becoming an increasingly sophisticated service, LEO systems are not far off, and cellular is converting to digital, making possible the offering of PCS-type services. There is a legitimate concern that the introduction of too many competitors in this marketplace may be as harmful as having insufficient competition. In some smaller markets, for example, it is still not clear whether two cellular operators can ultimately survive. Too many PCS licensees in a market could result in a number of marginal entities, thus actually weakening competition. For these reasons, APCN submits that the maximum number of providers the FCC should consider licensing in each market is two.

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[2] PCS Notice at ¶34.

Size of Spectrum Blocks. The Commission recognizes that each PCS licensee will need enough spectrum to be competitive with other land mobile services and to be able to offer the full range of PCS services. The Commission also recognizes that PCS may have to share spectrum with incumbent users in the 2 GHz band and therefore that adequate spectrum blocks will have to be given to each licensee. Thus, a 30 MHz allocation per licensee is proposed with comment solicited on 20 MHz and 40 MHz alternatives.[3]

The fairest way of allocating spectrum would be to award each licensee an amount of shared spectrum based on the number of incumbent users. This process, though fair, would be unwieldy. Therefore, it is APCN's position that 40 MHz is needed for each PCS licensee in a spectrum sharing environment. As the Commission knows, APCN has been a strong proponent of the efficacy of spectrum sharing techniques which would render the relocation of incumbent users in the 2 GHZ band unnecessary. The Commission is proposing a lengthy transition period for relocation of private users in the 2 GHz band and no relocation for public safety users. Thus, there will be a continuing need for shared use and, therefore, more spectrum will be needed by PCS licensees than if the spectrum were "clean." This is especially true in markets like Los Angeles where the number of users in the 2 GHz band is the highest in the country and the approximately 75 paths operated by governmental users are

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[3] PCS Notice at ¶¶35-37.

exempted from involuntary relocation. It would therefore be unwise, and perhaps even unworkable, to allocate as little as 20 MHz to each PCS licensee. 40 MHz, on the other hand, appears to be what is necessary.

Whatever the size of the block assigned to each PCS licensee, APCN wishes to point out that the intensity of existing use of the 1850-1990 MHz band varies not only by market but also by frequency block. Therefore, it could be inequitable for the Commission to simply license a particular frequency block to each licensee. The block one licensee received might be relatively "clean" whereas the block the next licensee was assigned might be crowded with incumbent users. For example, APCN performed an analysis of the Los Angeles area which demonstrates the distribution of existing microwave users in the three fixed microwave bands proposed by the Commission:[4]

BAND	GOVERNMENT	PRIVATE	TOTAL
A	21	53	74
B	17	31	48
C	37	43	80

As can be seen, the Band B licensee would have a significant advantage over the other two licensees. This type of unintended handicap can be avoided either by letting each licensee operate in the entire PCS allocation, with a frequency coordination requirement, or by letting the licensees sort out which 40 MHz each of them has exclusive rights to in a negotiation process.

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[4] PCS Notice at ¶38.

Either of these suggestions would ensure that each PCS licensee would have equally usable frequency space.

Technical Flexibility. Within certain constraints, the Commission is proposing to maximize the technical flexibility permitted to PCS providers. Although APCN has suggestions regarding some of the Commission's proposals, as noted in the succeeding paragraphs, APCN applauds the thrust of this policy direction. APCN believes that maximum technical flexibility and an open network architecture approach to PCS will best promote the growth and development of this exciting new service. PCS providers should be able to offer whatever services the marketplace demands, using all available technologies. Spectrum parameters and interference criteria should be the only limits. The Commission has been blazing a trail of competitiveness in the wireline arena with its recent decisions regarding special access, including physical collocation and unbundling of access to the network. This policy should carry over to PCS as well. Only then can the full potential of PCS be realized. APCN's views on particular technical proposals are set forth below.

The Commission states that its proposed frequency block pairing plan is consistent with an 80 MHz separation between transmit and receive frequencies, which the Commission believes is the existing practice.[5] While APCN agrees in concept with the Commission's discussion of separation, a significant number of microwave paths do not use 80 MHz of separation. APCN surveyed

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[5] PCS Notice at ¶39.

131 microwave users in the Los Angeles area and found that 64 users employ 80 MHz separation while 67 users do not.[6] The band allocation APCN has proposed permits more flexibility than simply assuming 80 MHz separation. This flexibility would also allow quicker and less expensive implementation of PCS.

The Commission proposes to give licensees the flexibility within their frequency blocks to channelize them as they see fit in order to accommodate the technologies they wish to use and the services they wish to offer.[7] APCN strongly supports this proposal. There are many different technologies being experimented with at this time and they require the use of various channelization schemes. Moreover, different services may also dictate more than one channelization scheme. Technical flexibility within a frequency block, subject to interference considerations, should therefore be the watchword.

The Commission is proposing a maximum PCS base station power of 10 watts (EIRP) and a maximum antenna height of 300 feet above average terrain. A maximum mobile unit power of up to 2 watts (EIRP) is proposed. These proposals are based on the experience with PCS experiments. As an alternative, the Commission seeks comment on power and height limits somewhat similar to those in cellular, perhaps even as high as 1000 watts and 1,969 feet for

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[6] Channel separation practices range from 40 MHz to 130 MHz.

[7] PCS Notice at ¶38.

base stations and power for the PCS mobile of up to 200 watts. [8] APCN recommends that the Commission not adopt any height or power limits for PCS base stations other than those which may be necessary to control inter-system interference. In order to allow the PCS industry to establish itself as a competitive force in the mobile communications marketplace, PCS will need to initially compete with the same products as the existing cellular duopoly. Once PCS is known and has established credibility in the marketplace, it will naturally need to develop its own identity and differentiate its services from cellular. As a result, PCS licensees must be given the technical flexibility to commence operations in a macrocell configuration before evolving to the expected microcell PCS layout. Moreover, given the capital-intensive nature of a PCS system infrastructure and the regulatory need to have PCS licensees comply with strict construction and operational benchmarks, this technical flexibility is very important to the viability of PCS.

Limits on Holding Multiple Licenses. The Commission asks whether it should impose some multiple ownership limits. Three possible alternatives are put forward for comment: one license per operator, a cap on the total spectrum one operator can control in a market, or deal with the issue on an ad hoc basis.[9]

APCN recommends that no specific limits be adopted. There are no such restrictions in cellular, SMR, paging, or any of the

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[8] PCS Notice at ¶¶114-116.

[9] PCS Notice at ¶81.

other services which are competitive with PCS, so, as a matter of fairness, there should be no such limits on PCS. As in these other services, the marketplace should be left to determine the optimum arrangement. This promises to become a very competitive environment. The Commission should not handicap its development at this early stage by adopting artificial limits which have no empirical basis. If concentration becomes a problem, the Commission can always deal with it on an ad hoc basis or revisit the question at a later date.

License Term. The Commission proposes to give PCS licensees a ten-year term and a renewal expectancy similar to that adopted for cellular telephone licenses.[10] APCN agrees that a long license term and a reasonable renewal expectancy are needed in order to attract the huge investment which PCS will require, particularly in view of the fact that PCS is a fledgling business with an unknown economic outlook.

Regulatory Status. As a matter of policy, the Commission seeks to subject PCS to the least possible regulation. It solicits comment on whether PCS should be classified as a common carrier or private land mobile service.[11] APCN submits that the Commission should not classify PCS exclusively as a private or common carrier. Instead, the Commission should take a more flexible approach which would allow a licensee to choose which

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[10] PCS Notice at ¶83.

[11] PCS Notice at ¶¶94-98.

mode of regulation is most appropriate for the services it plans to offer.

In drawing the line between common and private carrier regulation, the Commission must keep its policy goals in mind. Certain regulatory developments may result from a decision to classify PCS services one way or the other. Thus, although the Commission might well consider any common carrier PCS service to be "non-dominant" and thus subject to streamlined federal regulation, Section 2(b) of the Communications Act, 47 U.S.C. §152(b), reserves authority to the states to regulate intrastate common carrier communications services. The severing of the interstate and intrastate components of PCS would be extremely difficult. And, as the Commission knows, the courts have recently been restrictive of its authority to preempt state regulation of common carriers.[12] If, on the other hand, the Commission classifies some or all PCS services as private, the Commission would be on stronger grounds in controlling state regulation. In particular, Section 331(c)(3) of the Act, 47 U.S.C. §332(c)(3), provides that "no state or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service . . ." Thus any PCS service

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[12] Louisiana Public Service Commission v. FCC, 476 U.S. 355 (1986); California v. FCC, 798 F.2d 1515 (D.C. Cir. 1986). Cf. Public Utility Commission of Texas v. FCC, 886 F.2d 1325 (D.C. Cir. 1989).

classified as "private and mobile" would be immune from state regulation.[13]

The Commission, in allocating spectrum for new services, has not always attempted to resolve the issue of private versus common carriage on a prospective basis. Rather, similar communications technologies have been permitted to develop on both sides of the regulatory divide. Thus, there are common carrier paging systems (Part 22 of the Rules) and private carrier paging systems (Part 90 of the Rules). In two-way mobile radio communications there are conventional mobile telephone systems (Subpart G of Part 22) and cellular systems (Subpart K of Part 22), both licensed as common carriers, or private carrier SMR systems (Subpart S of Part 90). And, Point-to-Point microwave systems and Digital Termination Systems are licensed as either common carriers (Part 21 of the Rules) or private carriers (Part 94 of the Rules).

PCS is no different in these respects from the various other communications services and technologies that have developed over the years. It would be extremely difficult, if not impossible, to determine now whether the service will develop primarily as a common carrier or a private carrier service, or which would better serve the public interest.[14] Market forces will provide

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[13] See Telocator Network of America v. FCC, 761 F.2d 763 (D.C. Cir. 1985); American Teltronix, 5 FCC Rcd 1955 (1990).

[14] In this connection we note the Commission's concern that Section 332(c) of the Communications Act, 47 U.S.C. §332(c), may preclude private land mobile licensees from reselling

(continued...)

better answers to these questions. For these reasons, APCN respectfully urges the Commission to adopt a regulatory structure that allows PCS to grow and develop in both regulatory environments.

While the Commission could take the approach of dividing the available spectrum between the common carrier and private service, as is the case in the services cited above, a better approach would be to jointly allocate all of the available spectrum to both services, with inter-service frequency coordination being required. Applicants would specify whether they were requesting a private or a common carrier authorization, and the license issued would so designate the regulatory class of the system.[15] This approach has a number of advantages. It relieves the Commission of having to make a crystal ball

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[14](...continued)
interconnected telephone service for a profit. The Commission has historically taken the position that a private carrier cannot profit from the resale of interconnected telephone service. See Second Report and Order in Docket No. 20846, 89 FCC 2d 741 (1982). The risk, of course, is that a party profiting from such resale might then be classified as a resale common carrier. Consistent with APCN's regulatory approach, a party desiring to profit on such resale will presumably be willing to be classified as a common carrier. The more important question involves the terms of interconnection. As set out below, APCN urges the Commission to ensure fair and equitable interconnection terms and conditions for both private and common carrier PCS operations.

[15] This is essentially the approach followed in the licensing of domestic satellite earth stations. All applications are filed with the Common Carrier Bureau and subject to the technical requirements of Part 25 of the Rules, but the applicant specifies in the application whether the earth station will be operated on a common carrier or a private basis. Subsequent changes in regulatory status, from private to common carrier or vice versa, are requested by filing FCC Form 403.

determination at this time as to the relative spectrum requirements between common carrier and private licensees. It will also make a subsequent change in a licensee's regulatory status easier from both a practical and a procedural standpoint. In any event, to the extent that newer frequency use techniques (e.g., spread spectrum, fast packet, etc.) are implemented in PCS, traditional concepts of dividing spectrum will become both meaningless and inefficient.

PCS Licensee Eligibility. The Commission proposes to allow cellular operators to become PCS licensees outside their cellular service areas and seeks comment on whether they should be allowed to become PCS licensees inside their cellular service areas.[16] The Commission also proposes to allow local telephone companies to become PCS licensees both inside and outside their telephone service areas or, alternatively, to essentially "set aside" approximately 10 MHz of PCS spectrum for "initial deployment of a PCS system integrated with a wireline local operating company."[17]

APCN agrees with the proposal to exclude cellular operators from becoming PCS licensees inside their service areas since cellular systems can already provide PCS. As the Commission noted, "it is likely that cellular phone companies will provide (microcell) PCS services in the bands now used for cellular service."[18] However, APCN believes that the proposed

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[16] PCS Notice at ¶67.

[17] PCS Notice at ¶¶75-78.

[18] PCS Notice at ¶66.

ineligibility of cellular carriers in their service areas should not be extended to entities which hold minority, non-controlling equity interests in those carriers. The anti-competitive potential which underlies the proposed exclusion is much less compelling and the reasons for permitting such entities to participate in PCS are manifest. Companies owning minority interests are often substantial and experienced communications entities which own and operate cellular, paging and other such systems elsewhere in the country. To cast the ineligibility net this wide would thus preclude a large group of prime PCS candidates.[19] Moreover, there will be a need for PCS and cellular carriers to work closely together to resolve interconnection, roaming, billing and other issues. Some overlap of ownership cannot help but facilitate this process. APCN suggest that a maximum level for permissible cellular ownership be set, such as 20%, to ensure that the detriments to common ownership do not overcome the clear benefits.

APCN also submits that, if PCS licensees are allocated 40 MHz of spectrum, as APCN has urged, cellular licensees should be allocated more spectrum than their existing 25 MHz. If cellular licensees are to be ineligible for PCS licenses within their own service areas, one of the bases for that exclusion is that cellular systems already are allowed to offer PCS-type services

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[19] In this regard, APCN notes that a significant number of companies could be declared ineligible if they own all or part of a cellular system anywhere in a PCS license area, particularly if the license areas are large.

on their systems, particularly in light of the conversion to a digital format. However, in larger markets even the conversion to digital will not leave cellular systems much capacity for the provision of PCS services. The goal of competition would be better served in that case by allocating additional spectrum to cellular systems so that they can compete on more equal terms with the new, independent PCS systems.

APCN agrees with the Commission that local telephone companies should not be specifically barred from becoming PCS licensees within their own telephone service areas simply because they provide telephone service in the PCS market.[20] APCN does suggest, however, that the Commission adopt structural and non-structural safeguards, such as a separate subsidiary requirement and joint cost accounting, so that the anticompetitive potential of common ownership of the LEC "bottleneck" and the PCS can be controlled.

APCN strongly opposes the Commission's alternative proposal of either (a) setting aside 10 MHz of unassigned PCS spectrum for local telephone companies; (b) allowing them to acquire the 10 MHz from the allocated PCS spectrum; (c) or allowing them to lease or purchase the 10 MHz in the PCS aftermarket.[21] In those

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[20] APCN notes that the exclusion of cellular carriers within their service areas will also bar most local telephone companies from becoming PCS licensees in their own telephone service areas. Local telephone companies should not be exempted from the cellular exclusion since the rationale underlying the exclusion remains unaffected.

[21] [21] PCS Notice at ¶¶77-79.

situations where the local telephone company is excluded from becoming a PCS licensee because of its status as a cellular licensee in the PCS market, none of the variations of the Commission's proposals are viable for the same reasons underlying the exclusion in the first place. As to those situations when the local telephone company is not rendered ineligible to become a PCS licensee, APCN opposes as baseless the first variation whereby the local telephone companies would be effectively granted a "set aside" of 10 MHz for PCS operations. The prospect of "economies of scope" between the wireless and wireline operations, even if actualized, does not justify guaranteeing local telephone companies a PCS license. The Commission should be careful not to make decisions with long-term implications based on the very imperfect knowledge it has regarding what PCS will be, the role of the local telephone network in PCS operations and how PCS will fit into a competitive mobile communications marketplace.

PCS Licensee Selection and Qualifications. The Commission has suggested using lotteries to select the winner of each PCS license. The Commission is seeking comments on ways to reduce the costs and delays normally associated with lotteries. The initial application could either be a simple "postcard" type or it could require complete submission of construction and business plans, engineering specifications and firm financial commitments. Either way, the Commission would only examine the qualifications of the winner. Other options mentioned are short filing windows,

strict entry criteria, narrow eligibility requirements, and high filing fees.[22]

The Commission's concern is to hold down the volume of applications, most particularly those filed by speculators. APCN believes that this concern can be best addressed by tightening the applicant qualifications or "front end" requirements. The Commission's suggestion of a "postcard lottery" wherein "the winning applicant could be given 30 days to demonstrate that it meets all financial, technical and other eligibility requirements"[23] does not assure qualified applicants; only qualified licensees. It is much easier for an applicant to obtain a firm financial commitment when it has already won in a lottery. If it is the Commission's intention to stem the tide of speculative applications, applicants must be required to demonstrate their qualifications and eligibility at the time they file their applications. Thus, APCN supports the Commission's second option, "to require complete financial and technical showings on every application."[24]

In order to lessen the cost to the Commission of "preparing, handling and storing each application," APCN recommends that the applications be filed on microfiche as is currently done with certain filings made under Part 22 of the Commission's Rules. The Commission's proposal to "check the

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[22] PCS Notice at ¶¶85-90.

[23] PCS Notice at ¶85.

[24] PCS Notice at ¶85.

qualifications only of the winning applicants" will also lessen the burden on the Commission's resources as well as minimize processing and licensing delays.[25] With respect to the "total expenditure of resources by the industry," APCN suggests that qualified applicants would not be seriously troubled by the effort entailed in the preparation of such an application.

APCN suggests the following "front end" requirements:

(a) The Commission should establish a very high non-refundable application filing fee. The Commission's proposal to pattern PCS application fees after the method used by the Private Radio Bureau for nationwide 220 MHz applications is fundamentally sound.[26] However, since such a method is based on a small fee (e.g., $35) per call sign with a designation of one call sign per channel per market, it is extremely important that the Commission establish minimum initial system proposal requirements. Absent such requirements, applicants would be free to propose skeletal initial PCS systems in order to minimize the application filing fee.

(b) The Commission should also require that applicants include in their applications a legally binding firm financial commitment which can be satisfied either through internal financing (using current **audited** financial statements and a net

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[25] PCS Notice at ¶86.

[26] PCS Notice at ¶¶89-90.

liquid assets test) or through a firm financial commitment letter from a recognized lender.[27]

In order to deal with the problem of equipment vendors handing out thousands of financial commitment letters, such as happened in the cellular RSAs, equipment vendors should not be allowed to require applicants to purchase the vendor's equipment if they win the lottery. The Commission should also place a limit on the number of firm financial commitment letters that a single entity can issue in a single market, particularly if the Commission licenses more than two PCS operators per market. The financial commitment should cover construction and operation of the PCS system for a set period of time, based on benchmarks adopted by the Commission.

(c) The Commission should require that no party to a PCS application have any interest (direct or indirect, equity or voting or future income stream or sales proceeds) in another application for the same market or any of the rights which may flow from it. This requirement would be similar to Section 22.921 of the Commission's Rules as it applies to cellular applications.

(d) The Commission should require that no party to a PCS application alienate in any way (excepting death or other involuntary acts such as bankruptcy) any ownership interest in any pending PCS application or its applicant. This requirement

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[27] This requirement is similar to that used by the Commission in markets 1-120 for cellular applications. See 47 C.F.R. §22.917.

would be similar to Section 22.922 of the Commission's rules except that it would be more flexible with regard to situations where involuntary events result in the alienation.

(e) The Commission should require the submission, as part of each PCS application, of a detailed "real-party-in-interest" certification (this would include disclosure of all pre-licensing agreements affecting all aspects of construction and operation of the proposed system). This requirement would be a more comprehensive version of the certification required of applicants for 900 MHz authorizations in the Designated Filing Areas by the Private Radio Bureau.

By adopting strict "front end" requirements to govern applicant eligibility and qualifications, the Commission lessens the need for restricting legitimate pre-lottery settlements. Pre-lottery settlements should not be the product of pre-filing agreements and certifications to that effect from every participant in the settlement group should be required along with copies of the settlement agreements. While such partial settlements may increase the regulatory burden with respect to the processing and reviewing functions, they can also be expected to speed up the licensing process if the Commission requires the submission of the settlement agreements by a date certain well in advance of the lottery date.

Although not an application requirement, the Commission should require aggressive construction and operational benchmarks such that x% of the population in the market area be capable of

receiving PCS from the licensee's system within certain time frames.

Finally, APCN also believes that a reasonable holding period on lottery winners, covering at least the initial construction of the system, would further discourage speculators. Waivers would be available for legitimate personal and business reasons, but close scrutiny of such requests should be announced up-front.[28]

PCS Interconnection. The Commission has proposed that PCS licensees would have a federally protected right to interconnection with the LEC. Issues related to the type of interconnection would be preempted, but state and local regulation of interconnection rates would not be preempted. The Commission asks whether the PCS provider should be entitled to obtain a type of interconnection that is reasonable for the particular PCS system and no less favorable than that offered by the LEC to any other customer or carrier; whether more specific requirements may be necessary in certain circumstances; and whether the interconnection rights would differ depending on whether PCS is classified as private or common carriage.[29]

APCN agrees with the Commission that PCS carriers should have "a federally protected right to interconnection with the PSTN" and that PCS should be afforded interconnection "no less favorable than that offered by the LEC to any other customer or

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[28] Compare the 3-year holding period newly imposed on cable television operators by Section 13 of the Cable Television Consumer Protection and Competition Act of 1992.

[29] PCS Notice at ¶¶99-103.

carrier."[30] However, the Commission should make clear that the "federally protected right" is breached by more than an absolute denial. The experience with interconnection in the cellular context teaches that such a right can be compromised by local telephone company behavior that falls short of a flat denial. APCN recommends that the Commission take a more active role with respect to interconnection. In particular, the Commission should clearly explain that the PCS operators and the local telephone company are true co-carriers and that the local telephone company must treat the PCS operators as if they also were local telephone companies. This treatment would require that local telephone companies compensate PCS operators for landline telephone traffic carried on the PCS systems just as PCS operators, like cellular operators do now, would compensate the local telephone companies for PCS traffic carried on the local telephone company's landline facilities. Indeed, a "Calling Party Pays" policy should be implemented. This arrangement, which has been permitted by some PUCs for cellular, requires that the person placing the call pays for it. This is not only fair, but it is necessary for PCS, cellular and landline telephone to compete as true co-carriers.

While not preempting the states in this area, the Commission should require adherence to a set of guidelines which would ensure uniform national non-discriminatory treatment of PCS interconnection, particularly with respect to rates, terms and conditions. APCN also recommends that the Commission require

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[30] PCS Notice at ¶¶99, 101.